

**PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions - Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under the penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$_____, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is _____
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

RECEIPT # 59589
 AMOUNT \$ 5
 SUMMONS ISSUED UTA
 LOCAL RULE 4.1
 WAIVER FORM
 MCF ISSUED
 BY DPTY. GLK F.O.M
 DATE 10/26/04

United States District Court District		SUFFOL MASSACHUSETTS
Name LEON ROBINSON	Prisoner No. A-22594	Case No. SUCR2001-01384
Place of Confinement SOUZA BARANOWSKI CORRECTIONAL CENTER P.O. BOX 8000 SHIRLEY, MASSACHUSETTS 01464		
Name of Petitioner (include name under which convicted) LEON ROBINSON		Name of Respondent (authorized person having custody of petitioner) V. COMMONWEALTH OF MASSACHUSETTS <div style="text-align: right; font-size: 1.2em;">04-12254-MLW</div>
The Attorney General of the State of: <u>MASSACHUSETTS</u>		
PETITION		
1. Name and location of court which entered the judgment of conviction under attack <u>SUFFOLK SUPERIOR COURT OF BOSTON MASSACHUSETTS; SUPREME JUDICIAL COURT/S.J.C.</u>		
2. Date of judgment of conviction <u>PRETRIAL DETAINEE PURSUANT TO G.L. CH. § 52A, (2001)</u>		
3. Length of sentence <u>BEEN DETAINED FROM FEBRUARY 2001 TO TODATE OCT. 2004</u>		
4. Nature of offense involved (all counts) <u>FIRST DEGREE MURDER, AND POSSESSION OF A FIREARM NOT ON PERSON, NOT AT HOME; COUNT 1 and 2 ["NOTE"] NO FIREARM WAS EVER RECOVERED AS OF TODATE.</u>		
5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input checked="" type="checkbox"/> AWAITING TRIAL BY JURY (b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> AWAITING TRIAL, AND WILL BE TESTIFYING;		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> APPEALED BAIL HEARING TO S.J.C., OTHER MATTERS WAS ALLOWED TO BE ENTERED AT HEARING CONCERNING THIS SAME MATTER; DELAY OF TRIAL		

9. If you did appeal, answer the following:

- (a) Name of court S.J.C.; SUPREME JUDICIAL COURT;
- (b) Result DENIED BAIL AT HEARING, AND ORDER'ED CASE TO TRIAL MASS.R.CRIM.P.36
- (c) Date of result and citation, if known HEARING ENTERED 1/29/03, SJ-02-0571, SJ-02-0484
- (d) Grounds raised DEFENDANT'S DUE PROCESS RIGHTS WERE VIOLATED AND FEDERAL RIGHTS TO A SPEEDY TRIAL, MOTION TO DISMISS, BAIL, COMMONWEALTH DELAYS;

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court SUFFOLK SUPERIOR COURT, & S.J.C.; SUPREME JUDICIAL COURT;
- (2) Result DENIED BAIL, AND ORDER'ED COMMONWEALTH TO BRING CASE TO TRIAL IN TIME ALLOWED BY THE COURT; TODATE, COMMONWEALTH FAIL TO DO SO;
- (3) Date of result and citation, if known 11/26/02 SJ-02-0571, SJ-02-0486
- (4) Grounds raised DEFENDANT'S DUE PROCESS, AND SIXTH AMENDMENT, & EIGHTH AMENDMENT, & ARTICLE XII OF THE MASSACHUSETTS DECLARATION OF RIGHTS VIOLATIONS;

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court SUFFOLK SUPERIOR COURT, AND SUPREME JUDICIAL COURT, S.J.C.;
- (2) Nature of proceeding HEARING ON BAIL, & MASS.R.CRIM.P.36(b)(1)(2)(c)(2)(f)(2), VIOLATION OF SPEEDY TRIAL ACT, AND DEFENDANT'S DUE PROCESS RIGHTS;
- (3) Grounds raised SIXTH AMENDMENT, EIGHTH AMENDMENT VIOLATIONS OF THE CONSTITUTION OF UNITED STATES; (AS OF TODATE, NO TRIAL AS REQUESTED BY DEFENDANT)

ON SEPTEMBER 23, 2002, THE DEFENDANT FILED MOTION FOR A SPEEDY

TRIAL/SEE PAPER NO#35 ON DOCKET STATING THAT THE DEFENDANT WISHES TO

MOVE FORWARD FOR TRIAL; THE COMMONWEALTH FAIL, VIOLATION OF RULE 36

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result ON HEARING, THE COMMONWEALTH ADMITTED TO THE "DELAYS" CASE ORDER TO TRIAL;

(6) Date of result 1/29/03, AS OF TODATE, 3 $\frac{1}{4}$ YEARS, COMMONWEALTH STILL FAIL TO OBEY COURT ORDER

(b) As to any second petition, application or motion give the same information:

(1) Name of court SFFOLK SUPERIOR COURT

(2) Nature of proceeding MOTION TO DISMISS/DO-TO VIOLATIONS BY THE COMMONWEALTH;
DELAYS OF TRIAL, WITHHELD EXCULPATORY EVIDENCE, DUE PROCESS VIOLATIONS;

(3) Grounds raised SIXTH, EIGHTH, 14TH AMENDMENT TO THE UNITED STATES
CONSTITUTION AND ARTICLE XII OF THE MASSACHUSETTS DECLARATION OF
RIGHTS, AND FEDERAL STATE ACT ON SPEEDY TRIAL; S.J.C. JUDGES CLEALY
STATED THEY WILL DENIED BAIL IF THE MATTER WILL BE IN FOR TRIAL THIS
YEAR OF 2002, AGAGIN, CLEARLY A VIOLATION OF "FOUR COURT ORDERS"

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result THE COMMONWEALTH WAS ORDER BY COURT ON DELAYS, DISCOVERY EXT:

(6) Date of result 2/22/01, 6/14/01, 9/04/01, 9/24/01, 7/02/02, 12/17/02, 3/15/03, 5/10/04

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☒ ATTORNEY DENIED DEFENDANT'S REQUEST TO FILE

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

ON ALL ISSUS DEFENDANT RESPECTFULLY REQUESTED THAT BOTH COUNSELS APPEAL THE DENIED
ACTIONS ON: MOTION TO DISMISS, MOTION TO SUPPRESS, DENIAL OF SPEEDY TRIAL PURSUANT TO
MASS.R.CRIM.P.36, AND OTHERS, COUNSELS FAIL TO APPEAL AND SAVE RIGHTS ON APPEAL RIGHTS

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: IT WAS A DENIAL OF DUE PROCESS OF LAW BY NOT DISMISSING FIRST DEGREE
MURDER CHARGE, ON SPEEDY TRIAL VIOLATION AS IT IS DEFINE IN MASS.R.CRIM.P.36

Supporting FACTS (state *briefly* without citing cases or law) THE JUDGE WAS REQUIRED BY
MASSACHUSETTS LAW IN THIS 1ST DEGREE MURDER CASE TO INSTRUCT THE
ADA/COMMONWEALTH TO BRING THIS CASE TO TRIAL BY THE TIME ALLOWED BY
THIS COURT. IT WILL BE NOW FOUR YEARS TODATE THAT THE COMMONWEALTH HAD
DELAYED THE MATTER ON: DISCOVERY, EXCULPATORY EVIDENCE, AND CONTINUANCE
THE HEARING FOR MONTHS TO DELAY TRIAL. IT IS THE DEFENDANT'S RIGHTS
TO HAVE A SPEEDY TRIAL AS HE HAD REQUESTED MORE THEN ONCE FOR TRIAL.

B. Ground two: DUE PROCESS VIOLATIONS WHEN THE DEFENDANT WAS DENIED
HIS RULE 36, AND HELD WITHOUT BAIL, THE DEFENDANT FILED SPEEDY TRIAL

Supporting FACTS (state *briefly* without citing cases or law) THE DEFENDANT FILED A MOTION TO
DISMISS FOR FAILURE TO COMPLY WITH DISCOVERY, AND NONCOMPLIANCE TO
THE HOLD OF "FOUR (4) COURT ORDERS AS THE COMMONWEALTH DELAY(S) THIS
CASE FOR WELL OVER THREE (3 1/4 YEARS) AFTER THE S.J.C. HAD QUESTION'ED
THE COMMONWEALTH' WHY THE DELAYS, COMMONWEALTH STATED: ("I HAVE A BIG
CASE BACK UP"); THIS ACT IS CLEARLY A VIOLATION OF DEFENDANT'S RIGHTS.
THE S.J.C. DENIED BAIL BECAUSE COMMONWEALTH STATED TIME FOR TRIAL.

C. Ground three: VIOLATION OF DUE PROCESS, AND EIGHTH AMENDMENT & ARTICLE XII OF THE MASSACHUSETTS DECLARATION OF RIGHTS, AND SIXTH AMENDMENT;

Supporting FACTS (state *briefly* without citing cases or law) THE DEFENDANT FILE APPEAL FOR BAIL UNDER NEW DISCOVERED EVIDENCE THAT THE COMMONWEALTH WITHHELD EVIDENCE OF A I-WITNESS TO A SHOOTING/MURDER, THIS DISCOVERY WAS NOT GIVEN TO DEFENSE COUNSEL FOR TWO (2YEARS), AND LOST OF OTHER WITNESSES IN THIS CASE. THIS NONDISCLOSED EXCULPATORY EVIDENCE CLEARED THE DEFENDANT LEON ROBINSON OF THE SHOOTING/MURDER, THE BAIL WAS DENIED AS THE COMMONWEALTH TOLD THE S.J.C. JUDGES THAT THIS CASE SET FOR TRAIL!

D. Ground four: 5TH AMENDMENT VIOLATION DO-TO PROSECUTORIAL MISCONDUCT, POLICE MISCONDUCT, UNDER THE DUE PROCESS CLAUSE, AND STATUTE;

Supporting FACTS (state *briefly* without citing cases or law) THE DEFENDANT HAVE A RIGHT TO DUE PROCESS VIOLATIONS WHEN, UPON A REQUEST FOR SPEEDY TRIAL, AND UPON A REQUEST FOR EXCULPATORY EVIDENCE, THE GOVERNMENT "CONCEALS EVIDENCE" THAT IS BOTH "FAVORABLE TO THE DEFENDANT" AND MATERIAL TO THE DEFENDANT'S GUILT OR PUNISHMENT. THE GOVERNMENT FAILURE TO BRING MATTER TO TRIAL, AND TO DISCLOSE EVIDENCE THAT IS MATERIAL TO THE ISSUE OF GUILT AND IS EXCULPATORY IN NATURE VIOLATES A DEFENDANT'S RIGHT TO DUE PROCESS...

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: THE DEFENDANT

HAD REQUESTED COUNSEL MORE THEN FIVE TIMES TO PRESENT HIS APPEAL ON THESE MATTERS, AND THAY BOTH DENIED THE REQUEST, AS IT ALSO WAIVED THE RIGHT TO APPEAL. AS OF TODATE, A MATTER OF BOSTON POLICE PLAINTING BLOOD IS A ISSUE!

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☒ No ☐ U.S. DISTRICT CIVIL COURT, LAW SUITE, ACTION NO#04CV11023 RCL AGAINST THE BOSTON POLICE OFFICERS IN BOTH MATTERS;

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing JAMES H. BUDREAU, ANDREW M. D'ANGELO, AT 20 PARK PLAZA, BOSTON, MASSACHUSETTS 02116

(b) At arraignment and plea SAME ATTORNEYS ABOVE

(c) At trial JAMES H. BUDREAU, ESQ., AND ANDREW M. D'ANGELO, ESQ.

AWAITING TRIAL DATE, STATUS, M.G.L. c. § 52A.

(d) At sentencing SAME/ BUDREAU, D'ANGELO

AWAITING TRIAL

(e) On appeal NO APPEAL FILED, AWAITING TRIAL

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and the same time?

Yes ☐

No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐

No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒

No ☐

APPEALS ON ALL THE ABOVE PROCEEDING
AS OF TODATE, AWAITING FOR TRIAL DATE

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on:

OCTOBER 5th. 2004.

(date)

Signature of Petitioner

LEON ROBINSON, A-22594